No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977 77-251

LOCAL 657, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA OF SHEBOYGAN COUNTY,

Petitioner

vs.

WILLIAM SIDELL, RONALD STADLER and INTERNATIONAL UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Local Union No. 657 of the United Brotherhood of Carpenters and Joiners of America of Sheboygan County, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on April 12, 1977; an order denying

Petitioner's petition for Rehearing en banc was entered on May 19, 1977.

OPINIONS BELOW

The opinion of the Court of Appeals, as yet unreported, appears at Appendix A, infra, Ap.pp. 1 - 18. The order denying Petitioner's petition for rehearing en banc appears at Appendix A, infra, Ap.pp. 18-19. The opinion of the United States District Court for the Eastern District of Wisconsin, as yet unreported, appears at Appendix A, infra, Ap. pp. 20-24. The appellate court reversed the district court as to the question of subject matter jurisdiction (finding there was jurisdiction), but, nonetheless affirmed the lower court's order granting defendants' motion for summary judgment.

JURISDICTION

The order or judgment of the Seventh Circuit Court of Appeals was entered on April 12, 1977 (Appendix A, infra, Ap.pp 1-18). A timely petition for rehearing was denied on May 19, 1977 (Appendix A, infra, Ap., pp. 18-19). The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

QUESTION PRESENTED

The question presented to this court is of profound significance in national labor law.

Given Section 301(a) Labor Management Relations Act, 1947, as Amended (29 U.S.C.

§185 (a) (Appendix B, infra. Ap.p.25)), federal subject matter jurisdiction of an action between a local union and an international alleging breach of the Brotherhood Constitution by the international was petitioner afforded due process of law, in the courts below?

STATUTE AND FEDERAL CIVIL PROCEDURE RULE PROVISION INVOLVED

Section 301(a) Labor Management Relations Act, provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court or the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties " (29 U.S.C. §185 (a)). (See too Appendix B, infra, Ap.p.25.)

Rule 56(c) of the Federal Rules of Civil Procedure, dealing with motions for summary judgment and proceedings thereon, provides in pertinent part as follows:

> ". . . The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . ." (See too Appendix B, infra, Ap.p. 25.)

STATEMENT OF FACTS

Petitioner has been since October 20, 1899, a duly chartered autonomous local union affiliated with the International Brotherhood (hereinafter "the international") having jurisdiction over workers in the carpentry trade and related industries in Sheboygan County, Wisconsin (Complaint, ¶1). The Fox River Valley District Council (hereafter, "district council") is composed of eleven affiliated local unions which has at no time included petitioner within its membership or jurisdiction (Complaint ¶7).

By letter dated August 4, 1974, International General President William Sidell ordered petitioner to affiliate with the district council, allegedly basing his decision on the recommendation and investigation of General Representative Ron Stadler, which had concluded, et. al., that petitioner was "not operating in the best interest of its members " (Complaint,Exhibit A). Petitioner was advised that the affiliation had been thoroughly considered notwithstanding the absence of any official or unofficial presentation of evidence on behalf of Local 657, so the General President denied petitioner's request for further consideration upon the question of affiliation. Individual members of Local 657 were never given the opportunity to appear and to offer testimony in opposition to the required affiliation. By letter dated September 12, 1975, the General President refused petitioner's request for a copy of the Stadler report (Stadler Affidavit, Exhibit F).

Petitioner has taken great pains in the courts below to delineate the numerous inconsistencies, contradictions, and ill-based allegations asserted against it by Mr. Stadler. See e.g. the Affidavits of Carl Mohar, annexed to petitioner's brief, and petitioner's brief filed in the appellate court. Petitioner's appeal from the General President's directive to the General Executive Board was denied, the latter citing the above-referenced letter of September 12th (Complaint, Exhibit B). By letter dated November 20, 1975, petitioner advised the General Secretary of the international that it was taking a further appeal of the matter to the next general convention (Complaint, Exhibit C). However, by letter dated December 2, 1975, the General Secretary replied that he interpreted the Board's decision to be final and not appealable because under Section 57G of the Constitution, "decisions of the General Executive Board in all cases involving geographical jurisdiction, mergers, considerations and formations of councils shall be final." (Complaint Exhibit D.) (Note: a copy of the entire Brotherhood Constitution can be found as Exhibit A annexed to the summary judgment motion.)

This case originated upon the filing of a Complaint by petitioner dated January 20, 1976 for an injunction to restrain all of the defendants from enforcing the affiliation directive. The Complaint alleged et.al., that the affiliation order would cause irreparable harm and injury to petitioner (Complaint ¶18) and that the order was in violation of the Brotherhood's Constitution (Complaint ¶19,20,21,22). Defendants below answered denying the district

court had subject matter jurisdiction, and moved for summary judgment dismissing the action.

After submission of numerous briefs and affidavits, the district court, by opinion dated June 11, 1976 dismissed the action for lack of subject matter jurisdiction, holding that §301 (a) of the Labor Management Relations Act did not apply to issues of "intra-union autonomy". (Appendix A, infra, Ap.p.23.) The court of appeals reversed as to the question of jurisdiction, but, "addressing the merits" held that the international's affiliation order was supported by Section 6A of the Constitution (Appendix A, infra,Ap.p. 14). That section provides in pertinent part:

> "The United Brotherhood is empowered, upon agreement of the Local Unions and the Councils directly affected, or in the discretion of the General President subject to appeal to the General Executive Board, where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit, or require the affiliation with or disaffiliation from any Council by any Local Union, including the right to establish state-wide, province-wide and regional Local Unions or Councils having jurisdiction over specified branches or subdivisions of the trade."

A petition for rehearing en banc was denied by the same three-judge panel on May 19,

1977, (Appendix A, infra, Ap.p.18-19.)

REASONS FOR GRANTING THE WRIT

Although it is procedurally proper for an appellate court to find new grounds to support a lower court's grant of judgment, needless to say, the reviewing court must exercise great caution in directing the entry of judgment in order to avoid denying one side the right to a trial. The district court's judgment was founded exclusively upon its conclusion it had no subject matter jurisdiction, and upon a refusal on its part to "intervene in the internal affairs of the unions." (Appendix A, infra,Ap.p. 23.) As far as that court was concerned, "no evidentiary hearing is needed to clarify the circumstances of the dispute." (Appendix A, infra, Ap.p22.) The appellate court however, found the instant matter to present allegations "affecting the local's relationship with employers, rather than the mere intra-union organizational charge involved in 1199 D.C.. Plaintiff's (petitioner here) pleading of external effects is not a bald conclusion unsupported by any factual allegation to give it substance." (Appendix A infra,Ap.p.13 and footnote thereto.) Nevertheless, the appellate court affirmed summary judgment on the ground that the Brotherhood Constitution allowed the international, quite simply, to do what it did and to make its own interpretation of its Constitution. Section 6A of the Constitution quoted on p.6, supra, was found controlling by the court.

However Section 10H of the Constitution provides in pertinent part:

". . . The General Executive Board is empowered to take such action as is necessary and proper for the welfare of the United Brotherhood of Carpenters and Joiners of America, subject, however, to the rights of appeal to the next General Convention, to the extent permitted by Section 57 G. " (Emphasis added.)

Thus, if a decision of the General President is not final as contained in Section 57 G of the Constitution, then it is appealable to the next General Convention.

Section 57 G provides:

". . .Also, decisions of the General Executive Board in all cases involving geographical jurisdiction, mergers, consolidations, and formations of councils shall be final. "

The decisions delineated in Section 57 G are correlated with the jurisdiction and authority granted the General President contained in Section 6 A, which, et al., involves geographical jurisdiction, mergers, consolidations and formations of councils and permitting, prohibiting or requiring affiliation. It is noteworthy that the permitting, prohibiting or requiring of affiliation is not mentioned in Section 57 G. The fact that the absence of the act of affiliation is not mentioned in Section 57 G must not be interpreted as an oversight. The framers of the Constitution specifically selected those decisions that would be final, and affiliation was not covered. Also noteworthy is the fact that Section 26B of the Brotherhood Constitution gives the General President the power to "form" district councils, when such is necessary in his opinion.

However, the same section when speaking of affiliation places the President's power in a distinctly separate sentence, and then only to state that no local union shall affiliate with or withdraw from such [i.e., an already formed district council] without the approval of the General President. Section 26 B should be read as granting the General President the power to form, i.e., initiate, district councils when none are already covering a given area, but not as giving him authority to reform an already existent district council without first allowing an appeal to the General Convention. Therefore, the order of affiliation was clearly appealable to the next General Convention and its denial constitutes a breach of the Constitution which is remedial under §301(a) Labor Management Relations Act.

The question presented to this court is of profound significance in national labor law.

"There are few relationships on the present-day American labor scene that pose more difficulties and require more delicacy in handling than the relationship of the international union to its local unions. An analogy may be drawn between this relationship and that of parent and child.

"It is generally assumed that the parent-child relationship is one inbued with love, respect, understanding and warmth. But it is a sad truth that this is often not the case. In fact, one must search deeply into classical literature to find a portrayal of the parent-child relationship that reflects warmth and understanding. Hamlet's relationship with his mother or Lear's

with his daughters, are more the rule than the exception." Cohn, The International and the Local Union, N.Y.U. Eleventh Annual Conf. on Labor, p.7.

Although it is generally recognized that the local is a "creation of its "parent" the international, at least one court has found that the local is a "separate and voluntary association which owes its creation and continued existence to the will of its own members," and that the local's revenues and functions are derived independently of the international. See Duris v. Iozzi, 25 L.R.R.M. 2167, 2170 (Super. Ct. N. J., Dec. 15, 1949). A basic pattern of "boiler plate" provisions are repeatedly found in international constitutions and go to the center of the theoretical relationship between the local and the international union. They signify the reservation of power in the international for the purpose of controlling the local and establishing the international and the supreme body; e.g., the power to change and redefine jurisdiction, the president's power to determine questions of constitutional interpretation, etc.. In fact the actual ties between a local and international and their respective areas of junction and control cannot be discovered by examination of the constitution and by-laws alone. Millis and Montgomery, Organized Labor 246 (1945).

The legal rights of the local in its relations with its international have been the subject of much litigation in which two major divergent views have emerged. Cohn, supra, p. 17, et. seq. The first view is based on the so-called "contract

theory." See Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 639 (1959). The contract theory is grounded in the traditional respect of the common law for the autonomy of private organizations. This has led to judicial indecision as to competency to "intervene" in "internal" union affairs. The traditional doctrine of nonintervention, borrowed from cases involving religious societies and fraternal orders, is a recurrent theme in court opinions.

"Yet, unions are not like private organizations. They have great economic and political power; they have extensive influence over opportunities for employment; and they are the beneficiaries of governmental support and protection. Presumably, it is desirable to have unions whose policies are democratically determined and administered by officers subject to democratic pressures. . ." Wollett and Lampman, The Law of Union Factionalism - The Case of the Sailers, 4 Stan. L. Rev. 177, 198 (1952).

With the enactment of the Labor-Management Reporting and Disclosure Act of 1959, the federal government has entered the area of internal union affairs. "For the first time certain essential democratic processes and rights of individual union members are being guaranteed within their own organizations . . ." See Holcombe, The Federal Government and Union Democracy, N.Y.U. Thirteenth Annual Conf. on Labor, p. 247, et seq. The Declaration of Findings, Purposes and Policy of the Act, as spelled out in Section 2 indicates the breadth of the Act: ". . . it is essential that labor organizations, employers, and their officials

adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations." The Act contains a Bill of Rights, which guarantees the right to sue, freedom of speech, retention of rights, etc.. See Title I of the Reporting and Disclosure Act of 1959.

Section 501(a) of the Act states that officers and other union representatives occupy positions of "trust" vis-a-vis the organization and its members.

While doubtless the main thrust of the section centers on the fiduciary responsibility of officers of labor organizations as dealing primarily with the management of property, the expenditure of funds and the transaction of union business affairs, its 468 words "contain the seeds for doctrinal growth which may have an impact reaching beyond the fiscal affairs of unions." See Wollett, Fiduciary Problems under Landrum-Griffin, N.Y.U. Thirteenth Annual Conf. on Labor, p. 267 et.seq.

"[M]ore timid courts. . . cling to the [union] construction, for they see no other guide in the cases and are misled by the illusion that almost all courts consider it the only appropriate standard". N.Y.U. Thirteenth Annual Conf. on Labor, p. 349. The appellate court which heard arguments in this action, finally placed all of its reliance on the Brotherhood constitution. Professor Summers, in an invaluable article entitled Judicial

Settlement of Internal Union Disputes, 7 Buff. L. Rev. 405 (1958), sheds light on the district court's failure to find subject matter jurisdiction and its refusal to analyze petitioner's allegation of an arbitrary affiliation directive. There at p.410, Professor Summers writes ". . .the courts have added the all-embracing excuse that the proceedings were 'void' for lack of 'jurisdiction' because of procedural or substantive defects -- in short, in all cases where the union has acted wrongfully!" (Emphasis added.) "The felt need to protect against arbitrary action inevitably overrides the courts' reluctance to intervene. . . The extent and frequency of judicial intervention grow out of the need to protect against the arbitrary exercise of power. This, in turn, requires some enforcible standard against which procedures and decisions can be measured." Id. p. 409-410.

Professor Summers recognizes the union constitution as one result of the courts' search for a standard. "The standard at first blush has an appealing guise of simplicity and judicial detachment. The court need merely read the words of the constitution and apply them without exercising any independent value judgment or becoming otherwise embroiled in the dispute... Such simplicity, however, is largely illusory. Union constitutions are seldom tightly integrated and precisely worded documents, but are a patchwork of provisions with a medley of details and vague generalities." Id., p. 411

A good example of patchwork provisions and generalities is the instant Brotherhood Constitution. Section 6A thereof, cited by the appellate court (Appendix A, infra,Ap. p.16) as the per se ground for resolving

this action on the merits, was interpreted by that court as allowing the General President to require local affiliation when he finds same to be "in the best interests of the United Brotherhood and its members" (Emphasis added.) Summers continues, "The constitution is not only an incomplete standard, but its guide lines are loose and insecure, for the courts are confined only within the extremes of restrictive reading the bare words and expansive implying of unwritten provisions." Id., p. 412.

In the appellate court, petitioner agreed that the international's failure to allow an appeal of the Executive Board's determination to the union's next General Convention was in violation of the language of the Constitution. (See argument presented at page 8 of this Petition.)

In short, "The union constitution has proven to be a wholly inadequate standard for the courts in settling union disputes". Id., p. 415.

As a result ,courts must be especially wary of using an international's own interpretation of its Constitution in settling union disputes. Yet, this is exactly what the appellate court did in this case, regarding the question of "best interests" and the right of appeal to the next General Convention.

Section 15D of the Constitution permitted the General Executive Board to "decide points of law. . . that may be submitted to it" (Exhibit A to motion for summary judgment affidavit). Therefore its interpretation of "formation of Councils" as used in Section 57G as

including the "affiliation of Local Unions with existing District Councils" (Exhibit D to Complaint) will not be disturbed since it is not a patently unreasonable construction of the constitutional language. Vestal v. Hoffa, 451 F. 2d 706, 709 (6th Cir. 1971).

If a union has the final authority to determine the meaning of its own rules there can be no question of constitutional requirements. See Wollett and Lampman, supra, p. 198. The great majority of courts have not restricted their review of a union's interpretation of its own Constitution to whether the construction is clearly unfair and unreasonable, but have made independent interpretations giving little or no weight to the union construction. See Blek v. Wilson, 259 N.Y.S. 443 (Sup.Ct. 1932). Thus "a provision of a union's constitution allowing district lodges to be formed at the discretion of the International President and Executive Council where two or more locals are in existence and in industries where shop interests so require does not commit to the International President and Executive Council on unabridged discretion to create distinct lodges in territories already occupied by locals". 48 Am. Jur. 2d, Labor and Labor Relations, §82, p. 109. "The problem has now shifted from violations of the provisions of the international constitution in actions against locals and members to situations where the international attempts to utilize the provisions of its constitution to oppress and restrict and control the actions of the local and members (footnote omitted)." Cohn, supra, pp.19-20.

The second view given by Cohn of a local's legal rights is of more recent vintage, and can be seen as a basic concept

of equity. "In the same manner that in the growth of our jurisprudence, it became necessary to develop an equity law to mitigate the harshness and nullify the rigidity of the common law, an equitable doctrine has developed as a restraint upon and in opposition to the automatic enforcement of the international constitution upon the local and its members and officials.

"This concept is receiving increasing acceptance by the courts in recent litigation involving battles against bureaucracy." (Footnote omitted.) Cohn, supra, p. 19. The courts' compulsion to intervene is strengthened by the conviction that substantial rights are involved. Courts will interfere with a union's internal affairs to safeguard the substantial rights of the members from impairment. 51 C.J.S., Labor Relations, §128, p.823.

"The international organizationally represents something big and impersonal. The international leadership, likewise, is not always familiar with the local picture. . ." N.Y.U. Eleventh Annual Conf. on Labor, p. 21.

In both the district court and the appellate court, petitioner made detailed expositions of the irreparable causal harm that would be occasioned to its members were the directed affiliation to take place; e.g., membership rights and benefits would be diluted, wages would be affected, costs of union participation would be increased, benefit funds lost, "back" taxes would have to be paid to certain funds, the services of a business representative attenuated, etc.. See, e.g. Affidavits of Carl Mohar annexed to petitioner's memorandums filed in the distrct

court. The appellate court refused to acknowledge the legitimacy of petitioner's so-called "parochial interests". (Appendix A, infra,Ap.p.16.) "But an equally important component of democracy is to be found in the assurance that the rights of individuals and minorities receive adequate protection, even against the majority. Hays, The Union and Its Members: The Uses of Democracy, N.Y.U. Eleventh Annual Conf.on Labor 35, p. 47. Neither the district court nor the appellate court so much as considered petitioner's allegations of arbitrariness and capriciousness. The district court limited itself to the issue of subject matter jurisdiction, while the appellate court resolved the "merits" via a constitutional interpretation which itself relied upon the constitutional interpretation made by the international.

In effect, the lower courts have avoided the "meat" of the issues presented to them. The district court stated, "It is my belief that the issue presented in the case at bar would require the court to intervene in the internal affairs of the union." (See Appendix A, infra,Ap.p.23 .) And despite the fact petitioner argued on appeal that the issues presented to the court by no means involved strictly internal union questions but rather the arbitrary, unreasonable and capricious exercise of judgment by the International President (Appellate brief, p. 13), the Seventh Circuit found itself bound to petitioner's "admonition" not to second-guess the international in the determination of its internal affairs! (See Appendix A, infra,Ap.p.16.)

As Professor Summer points out:

"Monotonous drumming of the tired slogan that the law should keep out of

> internal union affairs has deadened awareness of problems which cannot be wished away. The law must intervene in union disputes. The alternative is either to abdicate to brute force or to ratify the exercise of arbitrary power. " Summer, supra,p.423.

Again, in the lower courts, petitioner submitted detailed expositions of the irreparable harm which would be incurred by it and its members were the directed affiliation to be carried out. Because the General President's directive was based exclusively on the reports of one investigator, Ronald Stadler, petitioner asserted that were it able to show that the information presented to the General President by Stadler was suspect or erroneous, it would entail a finding of arbitrariness on the General President's part. (See petition for rehearing en banc.) Union members have the fundamental right to be assured of protection against arbitrary control by union leaders. See Schuchradt v.Millwrights Local Union No. 2834, 380 F. 2d 795 (10th Cir.1967).

An appellate court must of course, reverse the grant of summary judgment if it appears from all the record that there is an unresolved issue of material fact. Kennedy v. Silas Mason Co., 334 U. S. 249, 68 S. ct.1031, 92 L. Ed.1347 (1948).

Summary judgment has been denied in labor cases where a party's intent is disputed. See e.g. N.L.R.B.v. Smith Industries, Inc., 403 F. 2d 889 (5th Cir. 1968). Courts have stated that issues involving state of mind should not normally be disposed of by summary judgment. See United Steelworkers of America, AFL-CIO v. Northwest Steel Rolling Mills, Inc., 324 F. 2d 479 (9th Cir. 1963)

Thus, summary judgment was denied movant when the issue presented to the court was whether a corporation's directors had exercised sound business judgment. Fogelson v. American Woolen Co., 170 F. 2d 660,662 (2d Cir. 1948), where it was held that "a triable issue of fact exists as to whether the directors did exercize their honest business judgment or were motivated by the alleged purpose of favoring the President. It may be unlikely that the plaintiffs can prove their allegations, for such proof must be drawn largely from the directors themselves by cross-examination, but we do not think that their affidavits must be accepted as conclusive and thus preclude any trial on that issue."

Judge Learned Hand has cautioned federal courts against summary judgment in complicated cases, "especially. . . when the plaintiff must rely for his case on what he can draw out of the defendant." Bozant v. Bank of New York, 156 F. 2d 787, 790 (2d Cir. 1946).

Questions of credibility and state of mind are the type of dispute over a genuine issue of material fact that should be left to a trier of fact. Questions of state of mind have given the courts considerable difficulty. See, generally, Asbill v. Suell, Summary Judgment Under the Federal Rules - When an Issue of Fact is Presented, 51 Mich. L.Rev. 1143 (1953).

Rule 56(c)'s "no genuine issue. . . as a matter of law" test is applied at the appellate level so as to give the party who defended the summary judgment motion the benefit of any doubt as to the propriety of granting same. The Supreme Court has used the following language to emphasize the way in which the reviewing court should

evaluate the record on appeal from summary judgment motion: "on summary judgment the inferences to be drawn from the underlying parts contained in such materials (affidavits, depositions, and exhibits) must be viewed in the light most favorable to the party opposing the motion." U.S. v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176; and "we look at the record on sunmmary judgment in the light most favorable to. . . the party opposing the motion..." The party who defended against the motion will have his allegations taken as true. Bishop v. Wood, ____ U.S. ____, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976). Judge Frank, in Arnstein v. Porter, 154 F. 2d 464, 469 (2d Cir. 1946), cautions against granting a summary judgment on the ground that the opposing evidence sounds incredible. This warning is wise. See Marston v. Dresen, 85 Wis. 530, 540 ; 55 N. W. 896 (1893). Petitioner, again, has alleged that the General President's affiliation directive was arbitrary and capricious and founded upon suspect information.

In Hines v. Local Union No. 377, Chauffeurs, Teamsters, Warehousemen & Helpers, 506 F. 2d 1153, 1157 (6th Cir. 1974), cert. granted 421 U.S. 928, 95 S.Ct. 1654, Judge McCree found that "a case where questions of good faith or fraud are at issue should not be summarily decided without the taking of testimony unless it is clear that recovery cannot be had on any state of the evidence." Both the district court and the appellate court determinations are sadly silent on the arbitrariness issue.

It is impossible to decide that there are no material issues of fact without first deciding what the admitted or uncontroverted facts are. In that sense, the district court does and indeed must, decide what the facts are. Unless it does so, there is insufficient basis for appellate review of the district court decision. See Wehrle v. Brooks, 269 F. Supp. 785, 788 (D.C.N.C. 1966), affirmed per curiam, 379 F. 2d 288 (4th Cir. 1967).

CONCLUSION

As noted above, the issue of the legal rights of a local union vis-a-vis its international has been the subject of much litigation. Indeed the Seventh Circuit court noted a plethora of arguably conflicting cases regarding the question of federal subject matter jurisdiction under §301(a) Labor Management Relations Act of an action between an international and a local which alleged breach of the union constitution. In cases involving important public issues the courts are more reluctant to grant summary judgment. See Askew v. Hargrave, 401 U.S. 476, 91 S. Ct. 856, 28 L. Ed 2d 196 (1971). Despite the fact the appellate court determined that the lower court had the jurisdiction to hear the constitutional breach alleged in the instant matter, petitioner has never had such a hearing, despite the fact it has alleged and made showings of arbitrariness, capriciousness and unfairness on the part of the international.

The appellate court's affirmance of summary judgment was based solely upon it's interpretation that the union constitution had granted the General President broad powers in regard affiliation directives.

This indicates adherence to the so-called "contract theory" and suggests a reluctance to determine the arbitrariness issue on its merits. This amplifies the dilema which confronts local unions seeking relief from a trial court reluctance to delve into the actual merits of the controversy. Petitioner has never been given its day in court. The district court did not even grant a request for oral arguments. A party opposing the summary judgment motion is to be given the benefit of all favorable inferences, as well as having its allegations regarded as true. See Wright & Miller, Federal Practice and Procedure, Civil §2712, p. 526-528. For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted

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A P P E N D I X

APPENDIX A

1

JUDGMENTS BELOW

(1) Opinion of U. S.Court of Appeals for the Seventh Circuit:

In the
United States Court of Appeals
For the Seventh Circuit

No. 76-1819

LOCAL UNION No. 657 of the UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA OF SHEBOYGAN COUNTY,

Plaintiff-Appellant,

v.

WILLIAM SIDELL, RONALD STADLER, THE INTERNATIONAL UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Defendant-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin
No.76-C-39 - Myron L. Gordon, Judge

Argued January 7, 1977-Decided April 12, 1977

Before CUMMINGS and TONE, Circuit Judges, and CAMPBELL, Senior District Judge.*

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* Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation

CUMMINGS, Circuit Judge. This complaint was brought under Section 301(a) of the Labor Management Relations Act (29 U.S.C. §185(a)). The gravamen of the complaint by plaintiff Local 657 of the United Brotherhood of Carpenters and Joiners of America was that the three defendants, the Brotherhood, its general president William Sidell, and its agent in Sheboygan, Wisconsin, had violated the Brotherhood's constitution by Sidell's August 4, 1975, letter ordering Local 657 to affiliate with the Fox River Valley District Council of the Brotherhood[1] and by seeking to effectuate that order. Plaintiff sought a declaratory judgment, a preliminary and ultimately a permanent injunction prohibiting defendants from enforcing the affiliation order. Defendants filed both an answer and a motion for summary judgment, urging lack of subject-matter jurisdiction and in any event that they acted within their constitutional authority. Affidavits and exhibits were also filed by the parties.

In an unreported decision and order, the district court granted the defendant's motion for summary judgment, denied the injunction application and dismissed plaintiff's complaint on the ground that the court lacked subject-matter jurisdiction under Section 301(a) of the

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[1] In this respect, plaintiff maintains that the Brotherhood's General Executive Board's interpretation of the constitution to prohibit an internal appeal from the directive to the next quadrennial convention was incorrect. On appeal, plaintiff has abandoned a theory put forth below that the directive violated its Fourteenth Amendment due process rights.

Labor Management Relations Act. Before reaching the jurisdictional question, the opinion stated that the reasons for the Brotherhood's decision to require the plaintiff to affiliate with the District Council and its impact upon the plaintiff "are amply delineated in the record." The court found that the Brotherhood's affiliation directive was made pursuant to Section 6A of its constitution. (Mem. op. 2.)

Next the district court's opinion concluded that it lacked subject-matter jurisdiction because otherwise it would be required to interfere in the internal affairs of the unions and because the case presented "issues of intra-union autonomy rather than a significant threat to industrial peace" (mem. op.3). Although we disagree as to lack of jurisdiction, we affirm on the merits. United States v. General Motors Corp., 518 F. 2d 420, 441 (D.C.Cir.1975).

I. Subject-Matter Jurisdiction.

Section 301(a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties" (29 U.S.C. § 185(a)).

Defendants assert that this case involves an alleged violation of the Brotherhood's constitution rather than any contract violation. This, of course, assumes the proposition that a union constitution cannot be a Section 301 (a) "contract." However, the Supreme Court has held that Section 301(a) is to be liberally construed both as a grant of subject-matter jurisdiction[2] and as an authorization to develop a body of federal common law to provide the substantive rules for resolving labor disputes.[3] And the "legislative history makes clear that the basic purpose of §301(a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations." Dowd Box Co. v. Courtney, 368 U. S. 502, 508-509.

Defendants concede, as they must, that "contracts" between two labor organizations are generically enforceable through the mechanism of a Section 301(a) suit. Lion Dry Goods, supra, 369 U.S. at 26. Rather, they contest whether a union constitution is a Section 301(a) "contract" and whether

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2 Retail Clerks International Ass'n, Locals 128 and 633 V. Lion Dry Goods, Inc., 369 U.S. 17; Smith v. Evening News Ass'n, 371 U. S. 195.

3 Textile Workers v. Lincoln Mills, 353 U.S. 448; Local 174 Teamsters v. Lucas Flour Co., 369 U.S. 95.

a local and its parent international are sufficiently distinct entities to be two separate labor organizations within the meaning of Section 301(a). These analytical lines tend to blend together but we still believe it useful to address them seriatim.

As an initial matter, we should note that the legislative history of Section 301(a) does not answer these questions. The "contracts between labor organizations" clause was added in conference, and the Conference Report merely states that:

> "Subsection (a) provides that suits for violation of contracts between a labor organization and an employer, may be brought in the Federal courts. " 2 N.L.R.B., Legislative History of the Labor Management Relations Act, 1947 at 1535, 1543.

The general term "contract" is meaningless in the abstract unlimited sense since, as Chief Justice Marshall noted long ago, such a huge panoply of relationships can conceivably be comprehended by the word. Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 627-628. Writing then without statutory constraint, we start with the premise that "'[c]ontract in labor law is a term the implication of which must be determined from the connection in which it appears.'" Lion Dry Goods, supra, at 28. As Judge Sobeloff noted in holding a union constitution to be a Section 301(a) "contract" in Parks v. International Brotherhood of Electrical Workers, 314 F. 2d 886, 917 (4th Cir. 1963), certiorari denied, 372 U.S. 976,

"[t]he Supreme Court has recognized that under state law this is the generally accepted characterization of union constitutions," citing International Ass'n of Machinists v. Gonzales, 356 U.S.617, 618-619.[4] The First, Second and Sixth Circuits have followed the Parks' conclusion that a union constitution is a Section 301(a) "contract." Local Union 1219 v. United Brotherhood of Carpenters and Joiners, 493 F. 2d 93, 95-96 (1st Cir.1974); Abrams v. Carrier Corp., 434 F. 2d 1234, 1247-1249 (2d Cir.1970); Trail v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 542 F. 2d 961, 966-968 (6th Cir. 1976).

Defendants cite Hotel Restaurant Employees Local 400 v. Svacek, 431 F. 2d 705, 706 (9th Cir. 1970), for the proposition that a union constitution cannot be used as a "contract for jurisdiction under §301 in an intra-union problem unrelated to a collective bargaining agreement" (Br. 14 n. 17). But the Ninth Circuit's disagreement was limited to appellant's "contention that the union constitution is a 'contract' authorizing the District Court to entertain a dispute between a local union and a member." Id. Svacek does

[4] Section 301 (a) must of course be interpreted as a matter of federal common law. Textile Workers v. Lincoln Mills, 353 U.S. 448,457. "But state law, if compatible with the purpose of §301, may be resorted to in order to find the rule that will best effectuate the federal policy." Id.

not truly support defendants because there the union was seeking to impose a $300 fine upon Svacek for crossing a union picket line during a strike. The per curiam opinion distinguished Parks on the ground that the Fourth Circuit case involved "actions between local and international unions and were 'contracts'" within Section 301(a) and were "suits between any such labor organizations." 431 F. 2d at 706. Since the Svacek case purports to be in line with Parks, it is not an authority for the proposition that a union constitution is not a "contract" within Section 301(a) in a situation such as the present one.[5]

[5] In 1199 D.C. National Union of Hospital and Health Care Employees v. National Union of Hospital and Health Care Employees, 533 F. 2d 1205, 1207-1208 (D.C.Cir.1976), the Court of Appeals for the District of Columbia did not reach the issue whether a union constitution was a Section 301(a) contract because the complaint revealed only an intra-union conflict and was devoid of any concrete allegations of actual threats to industrial peace. However, the opinion cited nothing in the language of Section 301(a) or its legislative history which would permit a court to avoid the issue of whether a union constitution is a Section 301(a) contract in the absence of such allegations. Apparently the court implicitly decided that under the circumstances the local and its parent union were not separate labor organizations within the meaning of Section 301(a).

The most recent district court in the Third Circuit also holds that a union constitution is a Section 301(a) contract. Keck v. Employees Independent Association, 387 F. Supp.241 (E.D.Penn. 1974). To use the words of the Sixth Circuit in Trail, supra, 542 F. 2d at 968, "[w]e see no reason why [a Section 301(a)] contract might not be expressed in a union constitution, a local union charter, or a combination of both." [6]

The thrust of defendants' argument is that a local and its national are not separate labor organizations within the meaning of Section 301(a) under the circumstances of this case (see Br. 15-24). "The basic fear engendered by a broad interpretation of Section 301 is that the federal courts will become involved in solely internal union matters." Keck, supra, 387 F. Supp. at 249. Cf. Comment, Applying the "Contracts Between Labor Organizations" Clause of Taft-Hartley Section 301: A Plea for Restraint, 69 Yale L.J. 299, 307-308 (1959). Since there "is,

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6 We limit our holding to the situation where there is a written constitutional document creating rights and duties between two labor organizations. Where the claimed right is founded only on a claimed intra-union custom, jurisdiction should not be asserted. Abrams, supra, 434 F. 2d at 1248; Local 33, International Hod Carriers Building and Common Laborers'Union of America v. Mason Tenders District Council of Greater New York, 291 F. 2d 496, 507 (Friendly, J., concurring). We so limit our holding because "this court fully

(Footnote continued on following page)

of course, a general national policy against judicial interference in the internal affairs of unions." [7] Rota v. Brotherhood of Railway, Airline and Steamship Clerks, 489 F. 2d 998, 1003 (7th Cir. 1973), the defendants argue that Section 301(a) jurisdiction should only be asserted in a dispute between a local and parent union, if at all, when the constitutional breach presents a concrete actual threat to industrial peace (Br. 15-19). It is true that actual threats to industrial peace existed in Parks, supra, and that Judge Sobeloff directed his immediate attention to disputes (such as the one in Parks) which

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6 continued
recognizes its weighty obligation not to expand [an] initial grant of [subject-matter] jurisdiction into a carte blanche for unrestrained juducial [substantive] inventiveness in the areas of union structure and collective bargaining policy." Parks supra, 314 F. 2d at 917.

7 It should be noted that at least one commentator believes that even the federalization of the entire field of internal union affairs is supportable:

> "Much can be said * * * for the uniformity that would result in the law of internal union affairs through the development of a federal common law." Beaird, Union Trusteeship Provisions of the Labor-Management Reporting and Disclosure Act of 1959, 2 Ga. L. Rev. 469,518 (1968).See, e.g. Welch v. Breckenridge, 284 F . Supp. 125 (W.D.Ark. 1968);Brotherhood of Painters v. Brotherhood of Painters, Local Union 127, 264 F. Supp.301 (N.D.Cal.1966); Burlesque Artists Ass'n v.American Guild of Variety Artists, 187 F. Supp. 393 (S.D.N.Y. 1958).

"have traumatic industrial and economic repercussions." 314 F. 2d at 916. But in an accompanying footnote, Judge Sobeloff made clear that Section 301(a) was not limited to present threats to industrial peace:

> "It has been suggested that a holding of jurisdiction under §301(a) would tend to promote at least two congressional policies. (1) A major purpose of § 301(a) is to overcome state law jurisdictional difficulties and thereby make unions amenable to suits as entities and to subject their funds to judgments for violations of contracts. See Charles Dowd Box Co.v. Courtney, 368 U.S. 502, 511-513, 82 S.Ct. 519, 7 L. Ed.2d 483 (1962). Section 301(a) jurisdiction in cases like Local 28's would make this responsibility more effective. (2) in 1959, with the passage of the Labor-Management Reporting and Disclosure Act, 29 U.S.C.A. §401 et seq., Congress undertook extensive and detailed statutory regulation of certain aspects of internal union affairs. It is suggested that even assuming the LMRDA and §301(a) may not be construed in pari materia, it would serve congressional policy to construe §301(a) broadly, thereby making a whole remedy available in a federal court when the same conduct inflicts injury, adjudicable under LMRDA, upon individual members and also injury, not adjudicable under LMRDA, upon local unions." Id.n.50.

Indeed, In Local Union 1219, supra, jurisdiction was sustained between a local and its international where no present threat to industrial peace was extant. Local 1219 had been given a charter to represent millwrights in Maine, a jurisdiction which had previously been asserted by the carpenter locals. Objecting to this inroad on their influence, the carpenter locals refused to obey the international's order to cease bargaining for Maine's millwrights. The international caved in to the carpenter local's pressure and as a result Local 1219 was unable to place its members in jobs. Consequently, it lost most of its membership. There were no strikes or other overt breaches of industrial peace. In sum, Local 1219 seems to present the same sort of external effects which will be manifested here when plaintiff's collective bargaining agreement expires on June 1, 1977. As Judge Aldrich noted in Local 1219, when a local and international union's

> "relationship is a matter of contract, and that contract directly concerns the representation of workers in collective bargaining, there is no reason to assume that Congress did not intend the statute to apply simply because the two parties to the contract are related." 493 F. 2d at 96.

In support of their argument, defendants primarily rely on 1199 D.C.National Union of Hospital and Health Care Employees v. National Union of Hospital and Health Care Employees, 533 F. 2d 1205 (D.C.Cir.1976) and Smith v. United Mine Workers of America, 493 F. 2d 1241 (19th Cir. 1974). In D.C., the District of Columbia local was advised by the parent union that it was being merged

into the Baltimore Local and that officials of the Baltimore Local would govern the affairs of the members of the old District of Columbia Local. 1199 D.C. distinguished Local 1219, supra and Parks, supra, in the following terms:

> "In the case at hand, not only was there no local charter, but more importantly, there was no allegation that any employer was confronted with the dilemma of choosing between competing factions of the same union. Unlike Local 1219 and Parks, then, there were no concrete allegations of actual threats to industrial peace. Furthermore, at oral argument before this court the plaintiffs offered no suggestion that employers were forced to make untenable choices concerning union representation. Therefore, the allegations concerning the union constitution reveal only an intra-union conflict." 533 F. 2d at 1208.

However, in the present case, plaintiff does possess a charter and has posited a similar employer dilemma. In its complaint, plaintiff alleged:

> "[t]hat the plaintiff Local has been in existence over seventy-five years and has established stable and harmonious working relationships through contracts with contractors of Sheboygan County, Wisconsin and that to cause the plaintiff Local to be governed by contracts formulated and promulgated by the Fox River Valley District Council as mandatory upon plaintiff Local would cause immeasurable harm

> and interference with its present relationship and contracts with its employers."

Thus here we have an allegation affecting the local's relationship with employers, rather than the mere intra-union organizational change involved in 1199 D.C.[8]

Likewise in Smith, pursuant to a court-ordered election, new officers dictated a merger of several locals. The central organizational changes challenged by the affected locals in Smith simply were viewed as "internal union affairs which have no external application to industrial peace or to collective bargaining* * *" (493 F. 2d at 1243). The Smith court did not quarrel with the notion that "§301(a) must be liberally applied to promote industrial peace, but that principle has no application" where the dispute concerns an internal structural change with no extrinsic effects which are alleged to impact adversely on the local's relationships with its customary employers. Id.

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8 Plaintiff's pleading of external effects is not a "bald conclusion unsupported by any factual allegation to give it substance." 1199 D.C. surpa, 533 F. 2d at 1208 n. 1. The affidavit adduced provides the required factual allegations (see Plaintiff's Br.29-30). The fact that the external effects may not be actually felt until the June 1, 1977, expiration date of plaintiff's collective bargaining agreement is immaterial since this only temporarily suspends the occurrence of external effect rather than rendering it speculative.

We believe, as did the Smith court, that a federal court should be chary of extending the scope of Section 301(a) to comprehend federal court involvement in the control and supervision of purely internal union disputes. See also Parks, supra, 314 F. 2d at 906-907. But here there would be no such involvement. The dispute is resolvable on written instruments "of definite content and tenor," so that the district court need not divine the governing principles out of an ephemeral custom established by the distillation of a "welter of motions and cross-motions." Local 33, supra, 291 F. 2d at 506-507 (Friendly, J., concurring). Indeed, Judge Gordon found it easy to resolve the union constitutional question presented by plaintiff (mem.op. 2). In sum, it is fair to say that

> "[w]hen it is clear that an action is not intended to enforce internal union customs and practices and the relationship between the parties is contractual and may effect [sic]labor-management relations, there is no reason to assume Congress did not intend Section 301(a) to apply." Keck, supra, 387 F. Supp. at 250.

See also Local Union 1219, supra, 493 F. 2d at 95-96.

II. The Merits

Addressing the merits, we hold the district judge's conclusion that the Brotherhood's affiliation order was supported by Section 6A of its constitution was correct. That Section provides in pertinent part:

> "The United Brotherhood is empowered, upon agreement of the Local Unions and the Councils directly affected, or in the discretion of the General President subject to appeal to the General Executive Board, where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council, to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit, or require the affiliation with or disaffiliation from any Council by any Local Union, including the right to establish state-wide, province-wide and regional Local Unions or Councils having jurisdiction over specified branches or subdivisions of the trade." (Emphasis supplied.)

As Exhibit A to the complaint shows, defendant general president Sidell's letter of August 4, 1975, concluded that "the best interest of the membership would be served by Local Union 657 Sheboygan being affiliated with the Fox River Valley District Council." Although not so required because of the disjunctive phraseology of Section 6A, Sidell's letter of September 12, 1975, to plaintiff detailed the reasons why the affiliation directive advanced the interests of plaintiff local and the entire at large membership of the United Brotherhood (Exhibit F to defendant's motion for summary judgment affidavit). Plaintiff seemingly concedes that Sidell was thereby attempting to consider the best interests of the local in conjunction with the interests of the

membership at large (Br.15), but claims plaintiff's parochial interests adverse to affiliation manifestly outweigh the at-large membership's interests in favor of affiliation. Since plaintiff does not claim that this decision was tainted by bad faith nor that it did not represent the general president's actual best judgment as to how the plaintiff's and the entire membership's interests could best be advanced, it is not our place to balance the competing interests. This suit being for breach of contract, we are not empowered to rewrite the Brotherhood's constitution to strip Sidell of his authority to require this affiliation. Parks, supra, 314 F. 2d at 917. Under Section 6A the affiliation order may stand even though it does not meet with plaintiff's approval, for this part of the union's constitution has delegated this discretionary decisional authority to the general president where, as here, he has found it in the best interests of the Brotherhood and its members "locally or at large [§6A]," to require plaintiff's affiliation with the District Council. As even plaintiff has admitted this Court should not second-guess the Brotherhood in the determination of its internal affairs (Br. 16), and we will abide by this admonition here. Parks, supra, 314 F. 2d at 906-907.

Plaintiff also argues that its appeal to the Brotherhood's next general convention from the General Executive Board's November 3, 1975, denial of its appeal

from the general president's August 4, 1975, affiliation order should have been allowed (Exhibit C to complaint). The General Executive Board dismissed the initial appeal "because it would be in the best interests of the membership" to require affiliation for the reasons given in the general president's September 12, 1975 letter (Exhibit B to complaint and Exhibit F to motion for summary judgment affidavit). On its face, Section 6A. under whose authority the affiliation order issued, permitted plaintiff to appeal only to the General Executive Board. As explained to plaintiff by the General Executive Board (Exhibit D to complaint), its decision was final and not appealable to the general convention because Section 57G provides in pertinent part (Exhibit A to motion for summary judgment):

> "* * * Also, decisions of the General Executive Board in all cases involving geographical jurisdiction, mergers, consolidation, and formation of Councils shall be final."

In turn, Section 15D of the constitution permitted the General Executive Board to "decide points of law* * * that may be submitted to it" (Exhibit A to motion for summary judgment affidavit). Therefore its interpretation of "formation of Councils" as used in Section 57G as including the "affiliation of Local Unions with existing District Councils" (Exhibit D to complaint) will not be disturbed since it is not a patently unreasonable construction of the constitutional language.

Vestal v. Hoffa, 451 F. 2d 706, 709 (6th Cir. 1971).

III. Disposition

Although the opinion below is erroneous with respect to subject-matter jurisdiction, it correctly held that the affiliation "directive was made pursuant to the constitution" of the Brotherhood (mem. op.2). Accordingly, the summary judgment for defendant is affirmed.

A true Copy:

Teste:

Clerk of the United States
Court of Appeals for the
Seventh Circuit

(2) Order of Seventh Circuit Denying Rehearing En Banc:

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 19, 1977

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. PHILIP W. TONE, Circuit Judge

Hon. WILLIAM J. CAMPBELL, Senior District Judge*

LOCAL UNION No. 657 of U B of C & J of A of SHEBOYGAN COUNTY, Plaintiff-Appellant, vs. WILLIAM SIDELL, et al No.76-1819 Defendants-Appellees.	Appeal from the United States District Court for the Eastern District of Wisconsin No.76-C-39 Myron L.Gordon, Judge

O R D E R

On consideration of the petition for rehearing en banc filed in the above-entitled cause by plaintiff Local Union No. 657, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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* Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

(3) Opinion of U.S. District Court for the Eastern District of Wisconsin:

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

LOCAL UNION NO. 657, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA OF SHEBOYGAN COUNTY, an unincorporated labor organization,

Plaintiff,

v.

No. 76-C-39

WILLIAM SIDELL, RONALD STADLER, THE INTERNATIONAL UNION BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, an unincorporated international labor association,

Defendants,

DECISION and ORDER

There are two motions before the court. The plaintiff seeks a preliminary injunction, and the defendants have moved for summary judgment. The action is one in which the plaintiff asks for a permanent injunction barring the international union from enforcing a directive which requires the plaintiff to become affiliated with the Fox River Valley district council. In my opinion, the defendants' motion for summary judgment should be granted, and the plaintiff's application for a preliminary injunction should be denied.

The defendants' motion for summary judgment is based on the defendants' contention that this court is devoid of subject matter jurisdiction. The complaint asserts in paragraph 6 thereof that

> "That jurisdiction exists in this Court as between said labor organizations without respect to the amount in the controversy or without regard to the citizenship of the parties as provided by and in pursuance to Title III, Section 301(a) of the Labor Management Act and Title 29, Section 185 (a) of the United States Code Annotated."

There are no issues of fact surrounding the question of subject matter jurisdiction. The facts giving rise to the law suit as set forth in the complaint are not basically denied by the answer. All the subsequent submissions by both parties make it clear that the meaningful circumstances surrounding this dispute are not in issue.

It is true that the parties have significant conflicts regarding the wisdom of the international union's decision to require the plaintiff local union to affiliate with the district council. Nevertheless, the reasons for such determination by the international union and its impact upon the local union are amply delineated in the record now before this court. While the local union challenges the legal right of the international union to make its affiliation directive, it is clear that the directive was made pursuant to the constitution of the international union. Section 6A of the international union's constitution provides as follows:

> "The United Brotherhood is empowered, upon agreement of the Local Unions and Councils directly affected, or in the discretion of the General President subject to appeal to the General Executive Board, where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council, to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit or require the affiliation with or disaffiliation from any Council by any Local Union. . . ."

The court must determine whether it has subject matter jurisdiction under §301(a) of the Labor-Management Relations Act of 1947. While the facts surrounding the applicability of that statute are not in dispute, the legal applicability of the statute is sharply in issue. In my opinion, the latter issue is ripe for resolution; no evidentiary hearing is needed to clarify the circumstances of the dispute.

The defendants interpret the action at bar to be one wherein the court is asked to intrude upon an internal dispute between an affiliated union and its parent international union. The

plaintiffs, on the other hand, treat the dispute as one involving a contract between labor organizations and as one presenting a dispute which will adversely affect labor peace.

In their briefs, both sides recognize that there is a division of authority on the jurisdictional question. For example Abrams v. Carrier Corporation, 434 F. 2d 1234, 1248 (2d Cir. 1970), found section 301 jurisdiction in a dispute between a local union and its international under the latter's constitution. On the other hand, see Smith v. United Mine Workers, 493 F. 2d 1241 (10th Cir. 1974), and Hotel & Restaurant Employees Local 400 v. Svacek, 431 F. 2d 705 (9th Cir. 1970).

It is my belief that the issue presented in the case at bar would require the court to intervene in the internal affairs of the unions. Faced with a division of authority between the circuits and without the benefit of a clear-cut ruling by the court of appeals for the seventh circuit, I will not treat this as presenting a section 301 claim over which this court has jurisdiction. The case presents issues of intra-union autonomy rather than a significant threat to industrial peace. See 1199 D.C., National Union of Hospital, etc. Employees v. National Union of Hospital, etc. Employees, ____ F. 2d _____, 91 LRRM 2817.

Having concluded that the court is devoid of subject matter jurisdiction

it follows that the defendants' motion for summary judgment must be granted. It also follows that the plaintiff's application for a prelminary injunction may not be granted.

Therefore, IT IS ORDERED that the defendants' motion for summary judgment be and hereby is granted.

IT IS ALSO ORDERED that the plaintiff's motion for a preliminary injunction be and hereby is denied.

IT IS FURTHER ORDERED that the plaintiff's action be and hereby is dismissed.

Dated at Milwaukee, Wisconsin, this 11 day of June, 1976.

/s/ Myron L. Gordon
U.S. District Judge

STATUTE AND FEDERAL CIVIL PROCEDURE RULE PROVISION INVOLVED

(1) Section 301(a) of the Labor Management Relations Act (29 U.S.C.§185(a)):

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. "

(2) Federal Civil Rules 56(c):

"The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."